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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/662,134	09/12/2003	Ronald J. Hammond	0028019.00201	9078
21878	7590	11/30/2004	EXAMINER	
KENNEDY COVINGTON LOBDELL & HICKMAN, LLP			KOCHE, GEORGE R	
214 N. TRYON STREET			ART UNIT	PAPER NUMBER
HEARST TOWER, 47TH FLOOR				
CHARLOTTE, NC 28202			1734	

DATE MAILED: 11/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/662,134	HAMMOND, RONALD J.
	Examiner George R. Koch III	Art Unit 1734

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 09 September 2004.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-39 is/are pending in the application.  
 4a) Of the above claim(s) 10,11,13,26,28 and 29 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-9,12,14,19-25,27,30-33 and 37-39 is/are rejected.  
 7) Claim(s) 15-18 and 34-36 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>8/18/04;4/21/04</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of claims 1-9, 12, 14, 15, 19, 20-25, 27, 30-35 and 37-39, in the reply filed on 9/9/2004 is acknowledged. The traversal is on the ground(s) that the *species* requirement violates the *restriction* guidelines of MPEP 803 and 808.02. This is not found persuasive because the species requirement is not drawn from these sections of the MPEP. Rather, the species requirement is drawn from MPEP 808.01(a). Furthermore, applicant argues that there is no burden in searching for the separate species. This is not persuasive, as each species is mutually exclusive from the other, and would require separate text searches and drawing searches for the species. Furthermore, irrespective of the search burden, each species results in a prosecution burden as each species would require separate rejections that are unrelated to each other.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 15-18 and 34-36 have been rejoined, no prior art against generic claims 15 and 34 being found.
3. An action on claims 1-9, 12, 14-25, 27, 30-39 follows.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:
  1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
6. Claims 1-3, 5-9, 12, 14, 20-25, 27 and 37-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swanson (US 4,365,710), the admitted prior (paragraphs 0002 to 0004) and Villemure (US 5,647,191).

Swanson discloses a method of simultaneously making on a common assembly surface a plurality of composite cartons each comprised of a first singular carton layer adhered to a second carton layer, comprising the steps of positioning a plurality of first singular cartons (lowest array in Figure 1) in a predetermined array on the assembly surface (pallet 13), positioning adhesive at one or more predetermined adhesive locations on each first singular carton in the array of first cartons on the assembly surface (via the apparatus of Figure 5, see column 3), and positioning a plurality of second singular cartons en masse in a predetermined array adjacent to the array of singular cartons on the assembly surface.

Swanson does not disclose that the composite cartons are created such that they comprise a first singular carton adhered to a second singular carton, or positioning the

second carton layer over the first carton layer to create these composite carton since the layers correspond.

The admitted prior art discloses that it is known for composite cartons which comprise a first singular carton adhered to a second singular carton to be created. Furthermore, Villemure discloses that it is known to stack in such arrays on a pallet (see figures 1-3, which show an array of 4 to 5 layers of correspondence between stacks of items, follow by subsequent groups of arrays of 4 to 5 layers, and see especially column 4, lines 10-15). One in the art would appreciate that such an array allows for the cartons to be bonded in the desired configuration of the admitted prior art, and would improve production efficiency. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have utilized such a stacking pattern as in Villemure in order to create the product of the admitted prior art in order to achieve greater production efficiency.

Similarly, as to claim 20, see the rejection of claim 1 above for all of the limitations. Furthermore, Swanson also discloses that the first layer is positioned on a pallet (see item 13, and claim 2).

Similarly, as to claim 37, Swanson and Villemure discloses more than 2 layers of arrays. Swanson discloses repeating the positioning process for three predetermined arrays, and Villemure discloses repeating the positioning process for up to 5 arrays.

As to claim 2, 21, and 38, Villemure as incorporated into Swanson and the admitted prior art results in the additional plurality of layers as claimed. Specifically, Villemure discloses several “additional layers” in the stack (see Figure 2).

As to claim 3, 22 and 39, Villemure as incorporated into Swanson and the admitted prior art results in the additional plurality of layers being created a plurality of times.

As to claim 4, Villemure as incorporated into Swanson discloses

As to claim 5 and 23, the resultant composite carton product of the process of Swanson, the admitted prior art and Villemure is separable without substantially degrading the structural integrity of the singular cartons (and see column 2, lines 37-45, which discloses that the cartons are meant to be torn away from each other)

As to claim 6 and 24, Swanson discloses that the cartons are meant to be torn away from each other (see column 2, lines 37-45). However, Swanson, the admitted prior art, and Villemure do not suggest a specific separating force of about 20 to 22 pounds. However, official notice is taken that it is well known and conventional to optimize the prior art separation force range. One in the art would desire a range that provides both sufficient attaching force, without being difficult for a customer to separate. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have optimized the separation force to about 20 to 22 pounds in order to achieve sufficient joining strength with being difficult for a customer to separate.

As to claim 7, both Swanson and Villemure disclose that the quantity of first singular cartons equals the quantity of second singular cartons, since both use identical cartons in each identically sized layer.

As to claim 8, Villemure as incorporated with Swanson and the admitted prior art discloses that the second layer of the array is substantially identical to the second layer of the array.

As to claim 9, Swanson discloses that the assembly surface is a pallet (item 13)

As to claim 12 and 25, both Swanson (see column 2, lines 46-55) and Villemure (columns 2 and 3) disclose that each carton/package contain products before being positioned on the assembly surface.

As to claim 14, Swanson (see column 2) and Villemure (see column 3) discloses that the products in each carton are identical.

As to claim 27, the admitted prior art discloses that the products can be beverage containers (see paragraphs 0002 to 0004).

7. Claims 4 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swanson, the admitted prior art, and Villemure as applied to claim 1 above, and further in view of Fujiwara (US Patent 5,722,584)

Swanson, the admitted prior art, and Villemure do not disclose the additional step of positioning an object on each first singular carton prior to positioning of the second singular carton as in claim 4 or cuts on the surface of the carton as in claim 19.

However, Fujiwara discloses that it is known to include cut marks and objects on each carton for further use (such as partition flap 8). Fujiwara discloses that these partition flaps are useful on the customer site for use as displays (see column 4). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have utilized such an object in order to achieve further utility of the cartons.

8. Claims 30-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swanson, the admitted prior art, and Villemure as applied to claim 1 above, and further in view of Winski (US 5,269,645)

Swanson, the admitted prior art and Villemure do not disclose that the positioning is performed by a robot, that the robot is approximately equidistant from the first carton layer, second layer and pallet, that the pallet is lowered after each layer is stacked, or that the stack supply layers of first cartons and second cartons are raised with each operation.

Winski discloses a robot for stacking packages on a pallet (see Figure 13, item 226). Winski also discloses that the robot is approximately equidistant for all elements, and that elevator elements can be used to manipulate the levels of the individual elements (see Figure 13) analogous to the carton stacks. While Winski does not disclose lowering the pallet stack, one in the art would appreciate that the levels are relative, and disclosure of raising the supply stack would render obvious lowering of the pallet stack. One in the art would appreciate that these operations simplify the handling of the articles, and would improve production efficiency. Therefore, it would

have been obvious to one of ordinary skill in the art at the time of the invention to utilize such robot with stack and pallet elevator capabilities in order to simplify the handling of the articles and improve production efficiency.

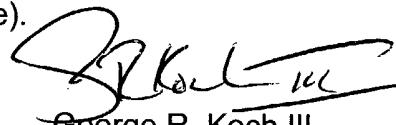
***Allowable Subject Matter***

9. Claims 15 (and dependent claims 16-18) and 34 (and dependent claims 35-36 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George R. Koch III whose telephone number is (571) 272-1230 (TDD only). If the applicant cannot make a direct TDD-to-TDD call, the applicant can communicate by calling the Federal Relay Service at 1-866-377-8642 and giving the operator the above TDD number. The examiner can normally be reached on M-Th 10-7.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Fiorilla can be reached on (571) 272-1187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



George R. Koch III  
Patent Examiner  
Art Unit 1734

GRK  
11/28/2004